

3-269A133



100 North Crooks • P.O. Box 550  
Clawson, Michigan 48017 • Phone (313) 288-3600

No. **SEP 26 1983**

Date **SEP 26 1983**

Fee \$ **50.00**

ICC Washington, D.C.

September 23, 1983

RECORDATION NO. **8871-E** Filed 1425

**SEP 26 1983 - 12 40 PM**

INTERSTATE COMMERCE COMMISSION

The Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Documents For Recordation

Dear Sir:

Enclosed for recordation pursuant to Section 11303 of the Interstate Commerce Act is an Assignment Of Sublease And Agreement (the "Assignment") relating to a certain Lease Of Railroad Equipment dated as of March 15, 1976 between Itel Corporation, successor in interest to SSI Rail Corp., and First Security Bank of Utah, N.A., trustee under a Trust Agreement with Michigan National Bank of Detroit and to a certain Lease Agreement dated as of March 26, 1976 among Itel Corporation, SSI Rail Corp. (now Itel Corporation) and the Marinette, Tomahawk and Western Railroad Company. The Lease Of Railroad Equipment was recorded with the Interstate Commerce Commission under Recordation No. 8322-B on May 12, 1976. The Lease Agreement was recorded with the Commission under Recordation Nos. 8871, 8871-A, 8871-B, and 8871-C on June 30, 1977.

The principal parties to the enclosed Assignment and their addresses, for purposes of indexing and cross-referencing, are:

- 1) Itel Corporation, Rail Division  
55 Francisco Street  
San Francisco, California 94113;
- 2) First Security Bank Of Utah, N.A.  
as Trustee  
Corporate Trust Division  
79 South Main Street  
P.O. Box 30007  
Salt Lake City, Utah 84130  
Re: Trust No. 59-80-5920-0
- 3) Michigan National Bank of Detroit  
Attn: Robert P. Thomas, VP  
100 North Crooks Road  
P.O. Box 550  
Clawson, MI 48017

*Handwritten signature: Robert P. Thomas*

# MICHIGAN NATIONAL BANK

The Secretary  
September 23, 1983  
Page Two

- 4) Seattle First National Bank  
c/o Seafirst Leasing Corporation  
Attn: Credit Manager  
800 Fifth Avenue, Floor 33  
Seattle, Washington 98124; and
- 5) Marinette, Tomahawk & Western Railroad Company  
c/o General Manager  
W. North Street  
P.O. Box 315  
Tomahawk, Wisconsin 54487

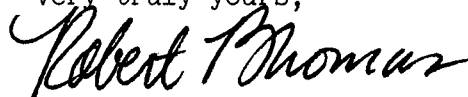
The Assignment covers the following railroad equipment, only:

149 50' general purpose boxcars, AAR mechanical designation XM, bearing the identifying numbers MTW 4050 through MTW 4171, inclusive, and MTW 4173 through MTW 4199, inclusive.

Identifying marks on all of the foregoing equipment are the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20 C" on each side of each unit.

Please record one of the enclosed six copies and stamp the other five copies and the copy of this letter enclosed with the recordation data. Return such copies to the party delivering this transmittal to you on our behalf, who will wait while you do so. A check in the amount of \$50.00 is enclosed in payment of the applicable recording fee. Should there be any questions concerning this letter or the document submitted for recordation, please telephone the writer (collect) at (313) 288-3600.

Very truly yours,



Robert P. Thomas  
Vice President

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Enclosure

**Interstate Commerce Commission**  
Washington, D.C. 20423

**9/26/83**

**OFFICE OF THE SECRETARY**

**Robert P. Thomas  
Vice President  
Michigan National Bank Of Detroit  
100 North Crooks, P.O. Box 550  
Clawson, Michigan 48017**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/26/83** at **12:40pm**, and assigned re-recording number(s). **8871-E, 8322-E, 8322-F**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SEP 26 1983 12 42 PM

ASSIGNMENT OF SUB-LEASE AND AGREEMENT dated as of July 31, 1983 ("Assignment"), by and between ITEL CORPORATION, a Delaware corporation (together with its successors and assigns, collectively "ITEL"), and FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Trustee under a Trust Agreement dated as of March 15, 1976 ("Trust Agreement"), MICHIGAN NATIONAL BANK OF DETROIT ("Lessor") and SEATTLE-FIRST NATIONAL BANK ("Lessor's Assignee").

WHEREAS, ITEL and Trustee entered into a LEASE OF RAILROAD EQUIPMENT ("Lease") dated March 15, 1976, recorded under recordation number 8332-B on May 12, 1976 with the Interstate Commerce Commission; and

WHEREAS, Trustee assigned, as collateral security, all of its right, title and interest, powers, privileges and other benefits under the Lease to Lessor's Assignee by ASSIGNMENT OF LEASE AND AGREEMENT dated March 15, 1976, recorded under recordation number 8322-C on May 12, 1976 with the Interstate Commerce Commission; and

WHEREAS, by Lease Agreement dated March 26, 1976 ("Sublease") recorded under recordation number 8871, 8871-A, 8871-B and 8871-C on June 30, 1977 with the Interstate Commerce Commission, ITEL subleased to Marinette, Tomahawk & Western Railroad Company, a Wisconsin corporation ("Sub-lessee") (i) the railroad equipment covered by the Lease (the "Trust Equipment") and (ii) additional railroad equipment not covered by the Lease; and

WHEREAS, on January 19, 1981 ITEL filed a Petition for Voluntary Reorganization under Chapter 11 of the Bankruptcy Act; and

WHEREAS, ITEL, Trustee, Lessor and Lessor's Assignee are desirous of affirming the Lease, conditioned upon execution of the instant Assignment, but limiting said Assignment so that it applies only to the extent the Sub-lease covers the Trust Equipment,

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, and for other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. ITEL warrants and represents that (i) the copy of Sub-Lease attached hereto as Exhibit A is true, accurate and complete; (ii) as it relates to the Trust Equipment ITEL has not previously made any assignment or other disposition, as security or otherwise, of any of its rights in said Sub-Lease; (iii) this Agreement does not violate the terms of any other agreements to

which ITEL is a party, nor is the consent of any other party required as a condition of ITEL's execution hereof, except to the extent the approval of the Bankruptcy Court is required by law; and (iv) upon execution of this Agreement, Trustee will acquire the rights hereinafter detailed and, provided this Agreement is appropriately and timely recorded with the Interstate Commerce Commission, Trustee's rights hereunder will be prior to the rights of any other person not a party hereto claiming an interest in the Sub-Lease.

2. ITEL hereby assigns, transfers and sets over to Trustee, as collateral security for the payment and performance of ITEL's obligations under the Lease, and hereby grants Trustee a security interest in, all of ITEL's right, title and interest, powers, privileges and other benefits under (i) the Sub-lease, (ii) all other presently existing or hereafter-acquired sub-leases in which ITEL is the sub-lessor ("other sub-leases"), as and only to the extent that the Sub-lease and other sub-leases relate to the Trust Equipment, including, without limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by ITEL from Sub-lessee or other sub-lessees (or their assigns, agents and escrow agents) under or pursuant to the provisions of the Sub-lease or other sub-leases to the extent that the same are payable with respect to the Trust Equipment whether as rent, casualty payment, indemnity, liquidated damages or otherwise (collectively "Payments"); provided, however, that until an Event of Default (as defined in the Lease) shall occur, it is understood that ITEL shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Sub-lease or other sub-leases, and to apply all Payments to which ITEL is entitled to the payment of any and all of ITEL's obligations under the Lease, and to retain the balance, if any. In the event of an occurrence of an Event of Default, in furtherance of the foregoing Assignment, but subject to the foregoing provisions of this paragraph, ITEL hereby irrevocably authorizes and empowers Trustee in its own name, or in the name of its nominee, or in the name of ITEL, or as its attorney (ITEL hereby constituting and appointing Trustee its true, lawful and irrevocable attorney for such purposes), to ask for, demand, sue for, collect and receive any and all Payments to which ITEL is or may become entitled under the Sub-lease or other sub-leases, and to enforce compliance by Sub-lessee or other sub-lessees with all the terms and provisions thereof. In the event of an occurrence of an Event of Default, ITEL shall, upon the written request of Trustee, at the sole expense of ITEL, notify the Sub-lessee, other sub-lessees, (or, if necessary, the Association of American Railroads) or any other party obligated to make payments in respect of the Sub-lease or other sub-leases (to the extent they relate to the Trust Equipment) to make such payments directly to Trustee.

To the extent the Sub-lease or other sub-leases cover railroad equipment not included under the Lease and the amount of any payment due to ITEL under the Sub-lease or other sub-leases as car hire payments (including both straight and incentive per diem), mileage charges, other rental revenues or other payments is calculated on an aggregate basis for all railroad equipment subleased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Trust Equipment. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of units of railroad equipment comprising the Trust Equipment and the denominator of which shall be the aggregate number of units of railroad equipment at the time subleased under the Sub-lease or other sub-leases.

3. This Assignment is executed only as security for the obligations of ITEL under the Lease and, therefore, the execution and delivery of this Assignment shall not subject Trustee to, or transfer, or pass, or in any way affect or modify, the liability of ITEL under the Sub-lease or other sub-leases, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of ITEL to Sub-lessee or other sub-lessees shall be and remain enforceable by said Sub-lessee or other sub-lessees, their successors and assigns, against, and only against, ITEL or persons other than Trustee.

4. To protect the security afforded by this Assignment, ITEL agrees as follows:

(a) ITEL will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Sub-lease or other sub-leases provide is to be performed by ITEL; and will not knowingly take any action to impair the security interest granted hereunder.

(b) At ITEL's sole cost and expense, ITEL will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of ITEL under the Sub-lease or other sub-leases;

(c) Should ITEL fail to make any payment or to do any act which this Assignment requires ITEL to make or do, then the Trustee, but without obligation to do so, after first making written demand upon ITEL and affording ITEL a reasonable period of time within which to make such payment or do such act, but without releasing ITEL from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the

security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of ITEL contained in the Sub-lease or other sub-leases; and in exercising any such powers, the Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and ITEL will reimburse the Trustee for such costs, expenses and fees.

5. Upon the full discharge and satisfaction of all of ITEL's obligations under the Lease and this Assignment, all rights herein assigned to Trustee shall terminate, and the estate, right, title and interest of the Trustee in and to the Sub-lease shall revert to ITEL.

6. ITEL will, from time to time, do and perform any other act and will cooperate in the execution, acknowledgment, delivery and filing, registering, depositing and recording (and will cooperate in the re-filing, re-registering, re-recording or re-depositing whenever required) of any and all further instruments required by law or reasonably requested by the Trustee in order to confirm, perfect or further assure the interests of the Trustee hereunder, including, but not limited to, recordations referenced in 49 USC §11303.

Furthermore, ITEL will, on a quarterly basis provide Lessor data with respect to the performance of the Trust Equipment under the Sub-Lease or other sub-leases of the Trust Equipment. Such data shall be in the form in which such data is presented in the letter of Robert E. Kiehle of ITEL to Robert M. Blum, Esq., counsel to Michigan National, dated July 14, 1983.

7. The Trustee may assign all or any of the rights assigned to it hereby or arising under the Sub-lease or other sub-leases, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to the obligations of the Trustee hereunder. The Trustee will give written notice to ITEL and Sub-lessee or other sub-lessees of any such assignment.

8. ITEL will pay and discharge any and all claims, liens, charges or security interests on the Sub-lease or other sub-leases or the Payments due or to become due thereunder claimed by any party from, through or under ITEL, or its successors and assigns, which become a claim, lien, charge or security interest on or with respect to the Sub-lease or other sub-leases or such Payments equal or superior to Trustee's interest therein, unless ITEL shall be contesting the same in good faith by appropriate proceedings in any reasonable manner.

9. Subject to paragraph 5 hereof, this Assignment is irrevocable and shall remain in full force and effect until its release in writing by the Trustee.

10. ITEL shall timely furnish Lessor with true copies of any amendment, modification, termination or assignment of the Sub-lease or other sub-leases.

11. ITEL shall save, indemnify, defend and hold Trustee harmless from any claims, obligations, responsibilities and damages arising under the Sub-lease or other sub-leases prior to such time as an Event of Default occurs, as defined in the Lease.

12. This Assignment shall be governed by the laws of the State of California, but the parties shall be entitled to all rights conferred by 49 USC 11303.

13. This Assignment shall be binding on the parties hereto, their successors and assigns.

14. If any term or provision hereof shall be illegal or unenforceable under any applicable statute or rule of law, the remainder of this Assignment shall remain in full force and effect and such term or provision shall be deemed omitted.

15. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

Itel Corporation, Rail Division  
55 Francisco Street  
San Francisco, California 94113  
Attn: Vice President-Finance

First Security Bank of Utah, N.A.  
Corporate Trust Division  
79 South Main Street  
Box 30007  
Salt Lake City, Utah 84130  
Re: Trust No. 59-80-5920-0

Michigan National Bank of Detroit  
Attn: Robert P. Thomas VP  
100 North Crooks Road  
P.O. Box 550  
Clawson, Michigan 48017

Seattle-First National Bank  
c/o Seafirst Leasing Corporation  
Attn: Credit Manager  
800 Fifth Avenue, Floor 33  
Seattle, Washington 98124



9. Subject to paragraph 5 hereof, this Assignment is irrevocable and shall remain in full force and effect until its release in writing by the Trustee.

10. ITEL shall timely furnish Lessor with true copies of any amendment, modification, termination or assignment of the Sub-lease or other sub-leases.

11. ITEL shall save, indemnify, defend and hold Trustee harmless from any claims, obligations, responsibilities and damages arising under the Sub-lease or other sub-leases prior to such time as an Event of Default occurs, as defined in the Lease.

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79 South Main Street  
Box 30007  
Salt Lake City, Utah 84130  
Re: Trust No. 59-80-5920-0

Michigan National Bank of Detroit  
Attn: Robert P. Thomas VP  
100 North Crooks Road  
P.O. Box 550  
Clawson, Michigan 48017

Seattle-First National Bank  
c/o Seafirst Leasing Corporation  
Attn: Credit Manager  
800 Fifth Avenue, Floor 33  
Seattle, Washington 98124

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[Corporate seal]  
ATTEST:

Title: President

Date: August 25, 1983

\_\_\_\_\_  
Secretary

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity but  
solely as Trustee

By: Randy F. Merchant

Title: Trust Officer

Date: 9/15/83

[Corporate seal]

ATTEST:

W. Clayton  
Secretary

MICHIGAN NATIONAL BANK OF DETROIT

By: Robert P. Thomas

Title: VICE PRESIDENT

Date: AUGUST 18, 1983

[Corporate seal]

ATTEST:

Marion M. Snow  
Secretary

SEATTLE-FIRST NATIONAL BANK

By: [Signature]

Title: Vice President

Date: 9-14-83

[Corporate seal]

ATTEST:

[Signature]  
Secretary

STATE OF CALIFORNIA       )  
                                  ) ss  
COUNTY OF SAN FRANCISCO)

On this 2nd day of September, 1983, before me personally appeared Edward M. O'Dea, to me personally known, who, being by me duly sworn, says that he is the President of the Phil Division of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



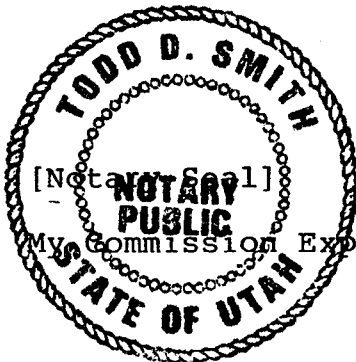
[Notary Seal]

W F Kroeger  
Notary Public

My Commission Expires:

STATE OF UTAH       )  
                                  ) ss  
COUNTY OF SALT LAKE)

On this 15 day of Sept, 1983, before me personally appeared RANDY R. MARCHANT, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.



[Notary Seal]

Todd D. Smith  
Notary Public

On this 18<sup>th</sup> day of AUGUST, 1983, before me personally appeared ROBERT P. THOMAS, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of MICHIGAN NATIONAL BANK OF DETROIT, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

ANTOINETTE P. PARTIPILO  
Notary Public, Macomb County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires January 20, 1983

My Commission Expires:

On this 14<sup>th</sup> day of September, 1983, before me personally appeared Michael E. Taft, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of SEATTLE-FIRST NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

[Notary Seal]

My Commission Expires: May 12, 1986